HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1782 OF 2005.

Haresh J. Matani & Anr. ...Applicant

V/s.

The State of Maharashtra & Ors. ...Respondents.

Shri Prakash Shah, for applicant.

Shri V.B.Konde-Deshmukh, APP for State.

Ms. Deepali Bosamia with D.A.Barot,for respondent No.3.

CORAM: A.M.KHANWILKAR,J
DATE : APRIL 12, 2005

P.C. :-

1. Heard the counsel for the parties.

2. Briefly stated, the matter pertains to residential premises which were occupied by one Prabhavati Govindjee Matani as a tenant on the 4th floor of "Dhanraj Niwas",53-55, Mody Street, Mumbai 400 001. She committed suicide. After her death, the applicant claimed her body for doing last ceremony. It is seen that the applicant carried out funeral of the deceased. The local police authorities have however, sealed the premises which were occupied by the said Prabhavati on the apprehension that since there was no other legal heirs or person residing alongwith the

deceased, the premises could be invaded by the trespassers.

3. The respondent-landlord thereafter, approached the Metropolitan Magistrate, 33rd court, Ballard Pier, Mumbai, by way of formal application claiming that the keys should be handed over to him being landlord of the premises. The Metropolitan Magistrate by the impugned order dated 3rd January, 2005 has rightly observed that the police had no authority or power to seal the premises in question. To that extent the view taken by the Metropolitan Magistrate is correct. The operative order passed by the Magistrate reads thus :

> ". Considering the facts and situation, I direct police to remove the seal. I and police have already sealed the cupboard, so, they need not remove the seal on the cupboard unless that aspect has been decided by the competent court. I do not expressly say that the police should handover the possession to the landlord. Otherwise, it would amount to interference in the work of civil court. I do not enter the controversy of civil rights of the parties.

4. The grievance before this court made on behalf of the applicant who claims to be the legal representative of the deceased is that once the Magistrate has held that the police has no power to seal the premises, then the nature of order passed by the Magistrate cannot be sustaine. Because, of operation of law, the applicant would be entitled to occupy the premises having inherited tenancy in view of the provisions of the Maharashtra Rent Control Act. Indeed, by the virtue of provisions of Maharashtra Rent Control Act, tenancy can be inherited by the legal representatives who are staying with the deceased at the relevant time and in their absence, any other heir and legal representative of the deceased. In such a case, the police would be obliged to deliver the keys by removing the seal on premises to the legal representative of the deceased.

5. In the present case, according to the landlord, the deceased has left behind a Will bequeathing tenancy in respect of the premises to one Deepak Asar, who is one of the legal representative of the deceased. According to the applicant, it is well settled that the tenancy cannot be bequeathed by way of Will. All these matters will have to be considered by the appropriate court where the issue of tenancy is pending or is

instituted by the party in that behalf. Suffice it to observe that the police has no authority to seal the premises, police will be obliged to return the key of the premises by removing seal of premises and other articles to a person who claims to be heir and legal representative of the deceased. If there are competing claims of the legal representatives or if the police has any doubt about genuineness of the claim of being legal representative put forth by any person, in that case, the keys will be retained by the police till appropriate order are obtained by concerned person from the Civil court. Such course will meet the ends of justice.

6. It will be open to the applicant to approach the concerned police station and establish his claim to be the legal representative of the deceased Prabhavati and if there is no competing claim, police can hand over the keys to him, which will be subject to outcome of the civil proceeding pending in respect of the premises already instituted by the landlord.

7. Application is disposed of in the above terms.